A. A. Superior Ambulance Service *and* Automotive and Special Services Union No. 461, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent. Cases 19-CA-13253 and 19-CA-13365

August 17, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On April 9, 1982, Administrative Law Judge Roger B. Holmes issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, A. A. Superior Ambulance Service, Tacoma, Washington, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(f):

"(f) Promulgating or enforcing a discriminatory no-posting rule prohibiting the posting of union material on company premises."

2. Add the following as paragraph 2(b), and reletter the subsequent paragraphs accordingly:

"(b) Expunge from its files any references to the discharges of Robert A. Christian, Edward D. Cleeves, and Richard Skinner, and notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT interrogate our employees about their union membership and union activities on behalf of Automotive and Special Services Union No. 461, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, or any other labor organization.

WE WILL NOT threaten our employees with a reduction in the size of the Company's business operations, loss of employment, reprisals, and physical harm because they engaged in union activities.

WE WILL NOT create among our employees the impression that our Company has engaged in the surveillance of their union activities by stating that we have a list of those employees who had signed with the Union.

WE WILL NOT promise our employees supervisory positions, choice of assignments, partners, location of work, and a raise if they do not engage in union activities.

WE WILL NOT make adverse changes in the working conditions of our employees because they engaged in union activities.

WE WILL NOT promulgate or enforce a discriminatory no-posting rule which prohibits the posting of union materials on company premises.

WE WILL NOT terminate our employees because they have engaged in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them by the National Labor Relations Act.

WE WILL make whole Robert A. Christian, Edward D. Cleeves, and Richard Skinner for their loss of pay, together with appropriate interest, which has resulted from our termination of them.

[1] The Administrative Law Judge concluded that Respondent violated Sec. 8(a)(1) of the Act by promulgating a no-solicitation rule prohibiting posting of union notices. The violation here is more accurately described as a discriminatory no-posting rule, and we will correct his Order and notice accordingly.

We agree with the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(1) by interrogating employees in all the instances as described by him. In so doing, we find it unnecessary to rely on all of the ramifications of *Paceco, a Division of Fruehauf Corporation*, 237 NLRB 399 (1978), cited by the Administrative Law Judge in support of these 8(a)(1) findings. We also find it unnecessary to pass on the Administrative Law Judge's statement that a respondent cannot violate Sec. 8(a)(1) in a conversation with a nonemployee.

We shall also order Respondent to expunge from its records any reference to the discharges of the discriminatees herein, and to notify them in writing that this has been done and that evidence of the unlawful discharges will not be used as a basis for future personnel actions. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

WE WILL offer immediate and full reinstatement to Edward D. Cleeves and Richard Skinner to their former positions of employment with our Company, without the loss of any of their seniority or other benefits, but if their former positions no longer exist, then WE WILL offer them substantially equivalent positions without the loss of their seniority or other benefits.

WE WILL expunge from our files any references to the discharges of Robert A. Christian, Edward D. Cleeves, and Richard Skinner, and WE WILL notify them in writing that this has been done and that evidence of their unlawful discharges will not be used as a basis for future personnel actions against them.

A. A. SUPERIOR AMBULANCE SERVICE

DECISION

ROGER B. HOLMES, Administrative Law Judge: Based on an unfair labor practice charge filed on February 17, 1981, and amended on March 9, 1981, in Case 19-CA-13253, and based on another unfair labor practice charge filed on March 18, 1981, in Case 19-CA-13365, both of which were filed by Automotive and Special Services Union No. 461, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent, the General Counsel issued on May 6, 1981, an amended consolidated complaint, and on May 19, 1981, an amendment to his amended consolidated complaint. The General Counsel alleges that A. A. Superior Ambulance Service has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

The hearing in this proceeding was held on December 10, 1981, at Tacoma, Washington. The time for the filing of post-hearing briefs was set for January 14, 1982.

FINDINGS OF FACT

1. Jurisdiction and labor organization

The Board's jurisdiction is not in issue in this proceeding. The Respondent is engaged in providing ambulance services in the vicinity of Tacoma, Washington. The Respondent's business operations meet the Board's jurisdictional standard for retail enterprises, and also the Board's indirect outflow and indirect inflow jurisdictional standards.

The status of the Charging Party as being a labor organization within the meaning of the Act also is not in dispute. Such status was admitted in the pleadings.

2. The witnesses and credibility resolutions

There were 17 witnesses called to testify at the hearing in this proceeding. In alphabetical order by their last names, they are: Weldon A. Barrett, Jr., who is a paramedic employee of the Respondent; Robert A. Christian, who is one of the alleged discriminatees in this proceeding; Edward D. Cleeves, who is also one of the alleged discriminatees; Lawrence C. Conover, who is an employee of the Respondent; Donald Crisman, who is the paramedic supervisor and a part-time paramedic for the Respondent, and who is also a paramedic instructor for the Clover Park School District; Darlene Francoeur, who is the personnel manager and dispatcher for the Respondent; Gary Garratt, who is a paramedic for the Respondent; Donald Giles, who is the owner of the Respondent; John Hansen, who was an ambulance driver for the Respondent until August 6, 1981, and who is a nursing practitioner; Sharlene Lynette Johnson, who is a dispatcher for the Respondent; Richard B. Jones, who was an employee of the Respondent from March 1979 until January 1981, when he was terminated; Dr. James Davies Krueger, who was a medical advisor to the Respondent until November 1980, and who is a physician in private practice; John Newell, who is president of the Charging Party Union; Randy Scott Pennington, who is an employee of the Respondent; Matt Perkovich, who is an employee of the Respondent; Richard Skinner, who is one of the alleged discriminatees, and Raymond D. Walradt, who is an employee of the Respondent.

In making the findings of fact to be set forth herein, I have considered the matters which were brought out on the record by the lawyers at the hearing and their arguments regarding the credibility of the witnesses. I have also considered the positions held by the various witnesses and their possible interest in the outcome of the litigation. (See, also, for example, *Gold Standard Enterprises, Inc., et al.*, 234 NLRB 618, 619 (1978).) In addition, I have given consideration as to whether the record demonstrates a basis for the knowledge of the witness concerning the particular facts about which the witness gave testimony. Also, consideration has been given as to whether a witness' account is consistent with the credited accounts given by other witnesses and whether it is consistent with documentary evidence.

As pointed out by the counsel for the General Counsel in his post-hearing brief, the testimony regarding the statements and conduct alleged by the General Counsel to be in violation of Section 8(a)(1) of the Act stands uncontradicted on the record. (See, for example, pp. 4, 10, and 11 of the post-hearing brief filed on behalf of the General Counsel.) There are, however, some conflicts among the witnesses, and I have resolved those in the findings of fact to be made herein. To illustrate the point, there is a conflict between the testimony of Cleeves and the testimony and Francoeur regarding telephone service at Cleeves' residence. I found the counsel for the General Counsel's argument persuasive on that conflict. (See p. 12 of the post-hearing brief filed on behalf of the General Counsel.) Cleeves' account is also supported by documentary evidence in the form of his telephone bills. There are other conflicts among certain parts of various witnesses' testimony in their recital of the past events which gave rise to this proceeding, but the foregoing example will illustrate the point.

On the witness stand, Pennington was unable to recall certain conversations in February 1981 about which he

was questioned at the hearing. However, he acknowledged that he had given a written statement on February 10, 1981, to the Union concerning certain matters, and that his statement was in his own handwriting. Under section 803(5) of the Federal Rules of Evidence, Pennington was permitted to read his own earlier statement into the record. The matters set forth in his statement were not contradicted by other testimony. Under these circumstances, including the passage of time between the events and his appearance on the witness stand, I have accepted as true the matters which Pennington related in his earlier handwritten statement, notwithstanding his inability to recall certain facts fully and accurately by the time of the hearing. I have also accepted his testimony when he appeared on the witness stand for a second time when the Respondent presented its case.

Having considered the foregoing matters, I have decided to base the findings of fact upon certain portions of the testimony from each one of the 17 persons who testified in this proceeding, as well as basing certain findings on portions of the documentary evidence. *Krispy Kreme Doughnut Corp.*, 245 NLRB 1053 (1979). As previously indicated, where there are conflicts among the witnesses, I will set forth the version which appears to me to be credible, accurate, and reliable, but the inconsistent version will not be given. See *ABC Specialty Foods, Inc.*, 234 NLRB 475 (1978).

3. Certain events in 1979 and 1980

Richard Skinner was employed by the Respondent from May 1979 to March 17, 1981.

Dr. James Davies Krueger, who has had experience spanning many years in the field of emergency medical services, voluntarily served as a medical advisor to the Respondent almost from the time of the inception of the Company until November 1980. At the hearing, Dr. Krueger explained the need for the timely response to calls for emergency services in both life threatening and unknown situations. He testified, "Now they don't always know whether it is this life and death matter or not. But they have to respond in an appropriate manner which is promptly." He said that calls by radio for ambulance services were monitored by operators connected with the Pierce County Sheriff's office and the Tacoma Fire Department.

One of his duties as a medical advisor to the Respondent was to review reports filled out by paramedics who, together with emergency medical technicians, had answered emergency calls. In particular, Dr. Krueger studied the reports submitted by the paramedics for their sufficiency of information, so that he could recreate the scene in his mind, and follow the paramedic's thinking to see whether the paramedic had chosen the appropriate course of action under the circumstances.

During late 1979 up to November 1980, Dr. Krueger reviewed reports submitted by Richard Skinner, as well as other paramedics employed by the Respondent. Dr. Krueger recalled at the hearing regarding the reports by Skinner, ". . . my first efforts were to get him to record sufficient information in a manner where I could reconstruct what had taken place." Dr. Krueger's next effort regarding Skinner was "to try and get him to increase his thinking as to differential diagnosis." In Dr. Krueger's opinion, his counseling with Skinner went "relatively slowly" compared to others, and he said that Skinner had a tendency to repeat the same mistakes. Dr. Krueger said it took a long time before Skinner wrote a complete report in his view.

In late October or early November 1980, Dr. Krueger recommended to Donald Giles that he terminate Skinner from employment based on Dr. Krueger's review of Skinner's reports. However, Giles did not follow Dr. Krueger's recommendation, and in November 1980 Dr. Krueger ended his services as medical advisor to the Respondent. At the hearing, Dr. Krueger explained:

> Your only alternative is to present very clearly to the ambulance owner that ultimately he has to choose between an employee and you as a medical advisor. If he does not pay attention to what you consider your reasonable medical advice, then you remove yourself from that position.
>
> I had no other recourse. It's either we work together, or I pick up my marbles and go home.

At times in 1980 and possibly in early 1981, employee Gary Garratt was of the view that Skinner took an unreasonably long time at the hospital after he delivered a patient there, ". . . because I spent quite a few times on street corners centralizing keeping the other areas covered while he was sitting at the hospital." According to Garratt, the ambulance crews were supposed to spend a minimal time at the hospital, so that the ambulance crew would be available for other service. He explained at the hearing, ". . . it was just kind of general knowledge that you spend a minimal amount of time at the hospital getting information and getting equipment retrieved and getting back in service, which is about 15 minutes." Garratt said he had made comments on the radio about the lengthy time that Skinner was spending at the hospital.

In the opinion of Paramedic Supervisor Donald Crisman, Skinner was the worst employee in the entire company. According to Crisman's view, Skinner's problems began "shortly after graduation shortly after work." Crisman stated that he had "recommended to no avail" to the Respondent that Skinner be fired for "overtreatment" of patients at the scene, rather than transporting the patients to the hospital where a physician and emergency room facilities were available. Crisman said with regard to Skinner, "I mentioned it to him, I think, on two occasions." According to Crisman, Skinner was not responsive to him. Crisman testified, "The response was simply that I'm the paramedic; I'm in charge of the patient at the scene; and I will treat the patient as I see fit."

Crisman acknowledged that he did not receive any criticism from emergency room physicians regarding Skinner, but that "in general" Crisman said that physicians and nurses felt that paramedics spent ". . . too much time on the scene playing doctor when you can get the patient in here."

Introduced into evidence as Respondent's Exhibit 5 was a copy of a notice dated January 26, 1980, from the Respondent to all personnel. In pertinent part, it states:

ALL PERSONNEL

26 Jan. 1980

1. Effective this date the following directive is in force.

a. Ambulances will not exceed the posted speed limits. This includes any and all 4 bell conditions.

b. Unless specific permission has been obtained from the management, drivers and paramedical personnel *will not* change places, i.e. paramedic driving and driver in attendance of the patient.

c. Some portions of the company SOP are not being complied with. It is considered by the management that failure to comply with standing procedures, denotes a gross violation and constitutes a careless attitude and is therefore grounds for termination.

d. Compartment doors between driver's and patient compartments will be kept closed at all times. This door is an emergency door and is not necessary for general conversation.

Crisman recalled at the hearing that "on more than one occasion" after Respondent's Exhibit 5 was published that Skinner occupied the driver's seat in the ambulance, while the driver was in the back of the ambulance. Crisman said that he, Donald Giles, and Darlene Francouer had spoken to Skinner about his doing so.

Introduced into evidence as Respondent's Exhibit 6 was a copy of the minutes dated June 10, 1980, of a meeting among representatives of the Respondent, a competitor, and the captain of the Tacoma Fire Department regarding improving the response time of ambulances.

4. The events in January 1981

Lawrence C. Conover performed his student internship for a paramedic's position with the Respondent. For training purposes, he was assigned to work with various ambulance crews. Conover estimated at the hearing that he worked on 15 or 20 occasions for an 8-hour time period with Skinner during Conover's internship. On one such occasion in January 1981, Conover observed Skinner and a female in a bedroom in the ambulance crew quarters. Conover was aware that there was a written company policy which prohibited anyone other than the ambulance crew from being present in the ambulance crew quarters. However, Conover did not report the incident at that time. At the hearing, he offered this explanation, "At the time I was not in employment with the company. As a student, you don't rock the boat." He further explained, "As I said, at that time I was not employed by the company. As a student, you don't go making all the paramedics mad at you. Or you can have a long internship."

Conover became an employee of the Respondent in February 1981, and he was still employed by the Respondent at the time of the hearing on December 10, 1981. About a week prior to the hearing, Conover informed management for the first time about the January 1981 incident involving Skinner, because he personally did not want Skinner to return to work for the Company.

Randy Scott Pennington was also aware of the written company policy that females were not supposed to be present in the crew quarters. On several occasions in January 1981, or possibly December 1980, Pennington arrived at work early in the mornings, and he observed Skinner with a female in the crew quarters, either in the bedroom or on a bed in the living room. Pennington did not report the incidents involving Skinner to management until about a week before the hearing on December 10, 1981. However, Pennington had spoken with other employees on that subject. Regarding his belated report to management, Pennington explained at the hearing that Francoeur had inquired about the subject about a week before the hearing, and at that time Pennington informed management.

Gary Garratt also indicated that he had knowledge that Skinner was with a female in the crew quarters "a few times" at the 13th and Union location. However, Garratt did not disclose whether he had informed management of that fact.

Sharlene Lynette Johnson worked as a dispatcher for the Respondent on a part-time basis on weekends from November 1, 1980, through July 1, 1981. Later on, she became a full-time dispatcher for the Respondent on September 19, 1981. According to Johnson, the company policy regarding mealtimes for ambulance crews was for the employees to call in to the dispatcher and ask "if they could be cleared for what we call a 10-7-A." Then the dispatcher asked the employees for their location. Johnson said that the ambulance crews were supposed to stay in their designated areas.

During one weekend in the first part of January 1981, Johnson received a radio call from Skinner, who informed her that he was going on a "10-7-A." Johnson responded by asking Skinner to advise her as soon as possible of the location where he would be eating. Skinner replied, "all right." Next, Johnson received a call from the Tacoma Fire Department "for a four bell, which is an emergency, on the north end of Tacoma." Johnson had told the fire department that the ambulance crew would be at 13th and Union, but she said regarding Skinner, "They came on the air and they were at 38th and Pine Street for a 10-7-A." Johnson estimated at the hearing that 38th and Pine was about 3 miles from 13th and Union. Johnson gave her view at the hearing that the ambulance crew was outside of its designated response area, and that Skinner had failed to properly carry out his responsibility to her to inform her of his whereabouts.

The Tacoma Fire Department filed a complaint with the Respondent that the dispatcher had told them that the ambulance crew was at one location, whereas the ambulance responded from a different location. Johnson asked Skinner to call the fire department and explain the situation, but, "He said no he would not; that was not his responsibility, and it was not his problem."

When ambulance crewmembers took a break for a meal, they carried a portable radio with them. In addition, employee Garratt said that the dispatcher could

reach the crewmembers by telephoning them at the restaurant. He said that the crews were supposed to eat at restaurants "within the responding area."

5. Other events in January 1981

The union organizational activity among certain employees of the Respondent began in January 1981. Skinner and Ed Cleeves discussed selecting a union to represent the employees. As a result of their conversation, Cleeves undertook to find a union to serve as their collective-bargaining representative. First, Cleeves went to a Teamsters local union in Olympia, Washington, but, because the Respondent's business operations were conducted in Pierce County, Cleeves was referred to the Teamsters local union in Tacoma. On January 16, 1981, Cleeves contacted John Newell, who is president of the Charging Party Union. Cleeves advised Newell that he was interested in organizing a union at the Respondent's Company. They discussed organizational procedures at their first meeting, and Newell gave Cleeves union authorization cards.

Cleeves contacted Robert Christian and discussed union organization of the employees with him. Thereafter, Christian assisted in getting employees of the Respondent to sign union authorization cards.

Skinner and Cleeves met with Newell later in January 1981 and submitted 19 signed union authorization cards to him. At still another meeting, Skinner, Cleeves, and Christian discussed union activities with Newell.

During the time while the union organizational activity was taking place among certain of the Respondent's employees, Cleeves telephoned Supervisor Crisman and asked him what Cleeves described at the hearing to be a hypothetical question. Cleeves asked Crisman, "What if some folks wanted to unionize and what if an ambulance company was opposed to it." According to Cleeves, during that conversation Crisman told him, "The old man will never go for it. He'll close the company down and run two cars."

Richard B. Jones had worked as an employee of the Respondent from March 1979 until January 1, 1981, when he was terminated. Thereafter, Jones has worked on a part-time basis as an employee of Hill Ambulance Company, and he has also worked as an emergency medical technician instructor at Clover Park Vocational Tech.

In late January 1981, Jones received a telephone call from Crisman, who had been his supervisor while Jones had worked for the Respondent, and who also was then his supervisor at Clover Park. Crisman asked Jones if he knew that Cleeves was starting a union at Superior Ambulance. Although Jones knew that fact, he denied knowing about it to Crisman because, "I didn't want to implicate anybody." According to Jones, Crisman told him, "Yeah, he is. He has 100 percent participation." Jones replied that was nice to know.

6. The events on February 4, 1981

John Newell had met Don Giles prior to the time that Newell had become a business agent of the Union and during an earlier time when Newell had worked for the Pierce County Sheriff's Department.

On February 4, 1981, Newell telephoned Giles and identified himself. Newell asked if Giles would be interested in having a check made of the Union's authorization cards, rather than proceed through the election process. According to Newell, the response from Giles was, "Well, he told us it was his business, and he'd do what he damn well pleased with it. Neither myself, his employees, or the United States Government would tell him what to do with his business, or how to run it."

Newell suggested to Giles three different persons to perform a check of the Union's authorization cards. They were the sheriff of Pierce County, a member of the clergy, and the dean of the University of Puget Sound School of Law. Newell said that Giles denied his request, and, according to Newell, "He said he would fire anybody he pleased. If he got down to just running the ambulance by himself, he would do it."

Following his conversation with Giles, Newell filed the Union's representation petition with the Board.

According to Crisman, Don Giles has said on a weekly basis for years that if a situation did not go away or improve, then Giles would cut his operation down to two cars. Crisman testified it was "one of his favorite comments." Crisman explained at the hearing the types of situations in which Giles made such a comment:

> Oh, problems with competitors. They're going to move into the area and wipe him out. He has always contended that with his wife, his daughter, and his son, who are all medically qualified with the exception of his wife, that with himself being a paramedic and his son and daughter being EMTs, with his wife knowing the dispatch and office procedures, their home being paid for, the ambulances being taken care of, they could run one ambulance out of their home without any outside support whatsoever and still make a living. He has always said that.

7. The events on February 6, 1981

On or about February 6, 1981, John Hansen, who was an ambulance driver for the Respondent at the time, had a conversation with Trudy Giles at the Respondent's main office in Lakewood. Hansen's partner, Gary Leahy, was also present. Trudy Giles asked if they knew anything about the Union, and both replied that they did not. Trudy Giles said that she had heard rumors about the Union, and she just wanted to know if they knew anything about it.

8. The events on February 7, 1981

On February 7, 1981, Crisman telephoned Cleeves and asked him what he knew about the Union. Cleeves said at the hearing that he "hedged" his reply and asked Crisman what he meant. Crisman then asked Cleeves if he knew about the Union, or had he joined the Union. Crisman added, "I have the old man with me." Cleeves responded, "I don't think that's any of your business," whereupon Crisman posed the inquiry once again, but in

different words. Cleeves replied "no." Then Crisman asked if Cleeves knew who the organizers were and did he know anything about it. Cleeves again replied "no" to those questions. Then Crisman asked to speak with Cleeves' partner, Randy Pennington.

On February 7, 1981, Pennington had two telephone conversations with Crisman. During the first conversation, Crisman asked if Pennington was a member of the Union. Pennington replied, "what Union." Crisman then asked if Pennington was a member or had joined the Union "in the company." Pennington responded that he did not know that the Company had a union. Crisman asked if Pennington was sure, and Pennington said, "yes."

About 20 minutes later that day, Crisman telephoned Pennington. During the second conversation, Crisman asked Pennington if he had asked who started the Union. Once again, Pennington said, "what union." Crisman said he needed to know what petition Pennington had signed. Pennington replied, "none." Crisman said that he wanted to know who was circulating the petition for the Union and what individuals were behind the Union. Pennington replied that he only knew about rumors, which were not facts, so Pennington would not spread rumors. Crisman then said that he needed to know to whom Pennington had given money for the Union. Pennington said, "what money." Crisman told Pennington that he needed straight answers and the names of the people who were approaching individuals concerning the Union. Pennington replied that he did not know, and he hung up the telephone.

On February 7, 1981, Raymond D. Walradt had a conversation with Don Giles. Also present were Gertrude Giles and Crisman. Don Giles asked Walradt if he knew anything about a union, and if Walradt had signed a union card. Walradt responded that he was not going to lie to Giles, and he said that he had signed a union card. Giles then inquired as to whom Walradt had spoken. Walradt replied that he had told the person that he would not give out his name, so Walradt said he could not do so. Walradt testified at the hearing, "I told him if I lose my job over it, I guess I lose my job over it. I'm very honest with him. That's the only way it can be."

During that conversation, Giles also told Walradt that there would not be a union at Superior Ambulance, and that anybody who wanted a union could find work some other place. Giles told him that Giles could go to one car if he had to do so.

Also on February 7, 1981, Crisman telephoned Christian at work and asked him if he knew anything about the union activities. Christian was hesitant to answer, so Crisman told him that he could say "no comment," or that he did not want to say. Therefore, Christian told Crisman that he did not want to say anything. Crisman then asked Christian if he would ask the other employee working with him, Matt Perkovich, if he wanted to say anything. Perkovich said he did not want to say anything.

A few minutes later, Trudy Giles telephoned Christian and asked why he did not answer about the Union. Christian replied that he did not want to comment on it. Trudy Giles asked why he did not want to comment. Christian once again told her, "I don't want to comment. I don't want to say anything about it." Then, Christian overheard on the telephone what appeared to him to be a muffled conversation between Trudy Giles and someone else. Christian testified, "I just heard a muffled type talking. She came back on the phone and said that my station was closed down—to shut it, lock it up, bring the rig, which is the ambulance, into the main station which is in Lakewood."

As Christian and Perkovich were preparing to close down the facility, they received an emergency call from the Tacoma Fire Department. They responded to the emergency call, but the call was canceled when they were about a half mile from the station. They returned to the 74th and Oakes station. Christian then checked with the dispatcher, Charlie Johnson, and asked if they were still supposed to come in, and Johnson said they were. Therefore, Christian and Perkovich closed the station and reported to the Lakewood office.

At the Lakewood station there was a conversation among Christian, Perkovich, Trudy Giles, and Crisman. Christian testified:

> Trudy Giles asked—She wanted to know why I didn't want to say anything about the union, and I just told her: "No comment." She also wanted to know who was involved, who started the union, and I didn't really know exactly who started the union and I also didn't know how many people had signed. I didn't really know the figures, and she just kept asking me that over and over again. She asked me if I was involved, and I said yes. I said that I was asked to come in because I am a shop steward, and they wanted some—not really legal—but a little more advanced help because I had been a shop steward for seven years.
>
> She kept asking me continually who was involved, who started it, and I just kept telling her: "No comment; I don't know." Don would ask a few questions in there. I'm not really sure what questions he asked. But the conversation kept coming of who was involved and who started it.

However, Christian also recalled that Crisman told him that Cleeves and Pennington had said "no"; employee Pat Smith had said "yes," and that employee Matt Seger had said he did not know anything about it. Christian further testified:

> A little bit later, Don Giles and Darrell Giles came in. They started getting in on the conversation. Trudy Giles brought up the subject of when I had mentioned the union, I had mentioned that we were looking for some retirement, some medical, and just some security so that we could have a place to work without somebody getting in a turmoil and firing us for no reason. So Trudy brought up the subject of Rick Jones being laid off and that Gary Garratt had brought up the subject of the same thing. So she asked me, she said: "Is Gary Garratt the one who started it?" I shook my head no. She then asked if I was the one that started it,

> and I said no. And then it was kind of left like that. Then she leaned over to Don Crisman, and she said: "I know somebody that's going to get canned." I don't know who she was talking about or anything like that.

Christian suggested that they have a meeting later that week to discuss the matter. Christian's work schedule was discussed to try to select a future date. Christian testified with regard to Don Giles, "He looked at me and says, 'If you're working by then.'" Don Giles also stated that he had been a member of Local 313, and, according to Christian, "If we had a union, it would be that local, but as far as he's concerned there will be no union in that place." Christian further testified with regard to Don Giles, "He had said that there will be no union. As far as he's concerned, he'd rather shut down all the stations and run with just two cars and that's the way it'll be."

In Christian's opinion, both Don Giles and Trudy Giles appeared to be "very tense" and excited, upset and under pressure.

With regard to Darrell Giles' part in the conversation, Christian testified, "He kind of kept quiet most of the time. At one point he did bring up that there may have to be clubs brought in like the old days in the union." Christian testified:

> He didn't stipulate any further. I asked him what he meant, and he just kind of left it at that. He also brought up the subject of us not doing our work out at the Spanaway car. I told him that if he would look at our records, he would see where we handed out cards to major businesses and major apartment complexes. He brought up the subject of that they had a call out at I think it's called the Arches. They had a Yellow Ambulance that responded to a call if we were handing out these cards. I said: "Who called?" And he didn't know who called. I said: "Was it an employee or was it a private person?" Because nobody knew who called for the ambulance.

In Christian's opinion, Darrell Giles considers himself to be "a humorist," and he tries to say things which will make people laugh.

Following that conversation, Christian and Perkovich were told to report back to the 74th and Oakes location and that the station was reopened. However, at midnight, Christian received another call from the dispatcher, Steve Romines, who said that the station would be shut down at 9 a.m. Therefore, Christian and Perkovich closed the station once again at 9 a.m. and turned in the keys and the ambulance at the Lakewood office.

According to Don Giles, the 74th and Oakes station was "a good location" for his business, but in December 1980 he received a letter from the city of Tacoma that required him to move out of that location because of a change in the zoning. He attributed the layoff of Christian and Cleeves to the closing of the 74th and Oakes station. Nevertheless, Giles acknowledged at the hearing that he continued to rent the 74th and Oakes location and he continued to have a telephone there, and that he reopened the 74th and Oakes station "in the early spring." Thereafter, the 74th and Oakes station continued to operate until October 1, 1981, when the Respondent opened a new station about a mile away from the 74th and Oakes location at 66th and South Tacoma Way. According to Francoeur, the rent of the 74th and Oakes location was $200 a month plus utilities, and the telephone cost was $11 a month. At the time that the Respondent reopened the 74th and Oakes station in the early spring of 1981, the Respondent closed an unsuccessful location known as the Spanaway station which had been opened on November 1, 1980. The Spanaway operation had represented an expansion for the Company and the Company had added one ambulance. However, the Respondent did not receive what it considered to be its fair share of the ambulance calls from the fire departments in the Spanaway area, and the Respondent believed that its competitors were being favored with more calls in the Spanaway area.

Introduced into evidence as Respondent's Exhibit 4 was a copy of a notice prepared by the Respondent with regard to the 74th and Oakes station. In pertinent part, it states:

> February 2, 1981
>
> SUBJECT: Status of Ambulance Station at 74th and Oakes. . . CLOSED.
>
> After several months of trial, the office at 74th and Oakes has been found to be economically unfeasible due to rising cost of operation. This will leave a surplus of personnel. Therefore, the office will be closed as soon as plans are completed. Personnel that are classified as surplus by the Company will be laid-off.
>
> Any personnel temporarily laid-off may be recalled in the future if they are available.
>
> The laying-off of personnel is no reflection on the dissatisfaction, on the part of the Company, of their work habits.
>
> All personnel will be notified on, or before, the 15th of February as to their status.

Garratt, who works as a paramedic for the Respondent, saw Respondent's Exhibit 4 sometime in early February 1981 at the dispatch office in Lakewood and also at the 74th and Oakes location. He was certain at the hearing that he had seen Respondent's Exhibit 4 prior to the actual closing of the 74th and Oakes station. He said that he had discussed the matter with "almost everybody in the company," and that it was widely known that the Company planned to close the 74th and Oakes location.

Pennington said that he had heard from employees that the 74th and Oakes station was going to close before it actually happened, but he ". . . didn't know if it was rumor or fact, but I heard this." Pennington got the impression that other people were aware that it was under consideration.

9. The events on February 8, 1981

On February 8, 1981, Hansen had a conversation with Crisman, who asked if Hansen knew anything about the Union. Hansen replied that he did not. Hansen testified that Crisman told him that he did not know who had told, but ". . . the old man had a list of everybody who had signed the union roster, and he wasn't going to allow a union to go through." Hansen replied that he did not know anything about it. According to Hansen, Crisman said that Don Giles was not going to allow the Union in, and that "he had ways of taking care of it. If he had to, he would shut down to one or two cars out of Lakewood, which means there would be no need for all of us. Either that or he'd turn Darrell and his friends loose." Hansen asked Crisman what he had meant by his last remark. According to Hansen, Crisman "told me that Darrell's friends were bikers."

On February 8, 1981, Hansen also had a conversation with Don Giles, who informed him that a new schedule was coming out. Hansen asked to see it, and Don Giles showed the new schedule to him. Hansen asked why "the big changes" were being made, and Hansen pointed out that he and his partner since September were being split up. Hansen testified that:

> [Don Giles] ". . . said that he was tired of everybody working together because if you worked together for too long, you get to be friends and friends cover up for one another. He was tired of getting screwed. So from now on, we were going to be working with everybody and at all the stations. You wouldn't work too many shifts in a row with any one person.

On February 8, 1981, as Cleeves was preparing to leave work, he received a telephone call from the dispatcher, Steve Romines, who informed Cleeves that there was a letter at the office for him. Cleeves told Romines that he would pick the letter up later that afternoon, but Romines advised Cleeves that he should pick the letter up "now."

A few minutes later, Trudy Giles telephoned Cleeves and told him that he could come to the office anytime that day to pick up the letter. Cleeves inquired about the postmark on the letter, and Trudy Giles told him that the letter was from the Company, so Cleeves went to the office where he got the letter. A copy of that letter, which shows the earlier date of February 4, 1981, was received into evidence as General Counsel's Exhibit 2. In pertinent part, it states:

> Mr. Ed Cleeves.
>
> SUBJECT: Change of Personnel status from Active to Surplus
>
> Your position as Ambulance Driver with this Company has been classified as a surplus. Therefore, be advised that effective immediately you are temporarily terminated, and you will be notified when your job is again feasible.
>
> This termination is based on a lack of economical feasibility at this time.

Cleeves had worked for the Respondent from April 1, 1979, until February 8, 1981.

10. The events on February 9, 1981

On February 9, 1981, Pennington received a telephone call from Crisman who said he had heard that, if he were not in the Union, he could not work, and, if he could not work, he needed to get into the Union. Pennington replied that he had not heard that. Crisman said that he needed to talk to someone in order to get into the Union, and that no one was being straight with him. Pennington said that he would see what he could find out. Crisman stated that he would call Pennington back and get the names.

11. The events on February 13 and 15, 1981

On February 13, 1981, Hansen worked on a shift with Crisman. Hansen testified:

> All day long he kept questioning me about the union—my thoughts toward the whole thing. I just kept telling him I really didn't know anything about it—that nobody had even bothered to contact me. He asked me my thoughts, and I told him that I figured if they hadn't contacted me by now they must not want me in their union, so the hell with them. He told me that the union wasn't going to do anything for me, and that if I wanted any security I was supposed to go to the old man, Mr. Giles, and that he could give me a supervisor's job. That way the union couldn't touch me. I asked him what kind of supervisor's job I could have, being just a driver, being Wally was in charge of all drivers so he was our supervisor. He told me that it didn't matter. I could be put in charge of counting bandaides and making sure they had enough of them on the ambulances or procuring toilet paper for all the stations, but as long as I was supervisory personnel that the union couldn't touch me.
>
> He told me that if I did this and told Mr. Giles I didn't want anything to do with the union, that he could pretty well promise me I could have my choice of days worked, who with, where I wanted to work at, and I might even get a raise out of it.

In addition, Hansen recalled that Crisman asked if he knew if Pat Smith or Bob Christian were in the Union. Hansen repeated that he did not know anything about the Union. Hansen also testified:

> He talked about it all day. I mean he was continuously—even at two o'clock in the morning when we would go on a call he was talking union. He told me that when it comes time to vote that guys like Skinner, Wally, Leady, Smith, Cleeves, and Garratt wouldn't be allowed to vote because they were supervisory personnel. I asked him what he meant by that, and he said that Don Giles had papers on them where he made them in charge of their respective stations. And that's all he needed to prove they were supervisors. Supervisory personnel weren't allowed to vote.

On February 15, 1981, Hansen again worked on a shift with Crisman. Hansen testified:

> He just continued his questioning me and my thoughts and bringing up different people's names like Bob Christian and Pat Smith again—if I had heard anything on my day off or what I thought towards the union.
>
> He said that—one of his continual sayings was, you know: "Dad ain't stupid. He's not going to allow a union to go through." At one point, he told me that Dad, which is Mr. Giles, knew who the cause of all this was and that it was Cleeves, Christian and Skinner. And he's already taken care of Cleeves and he has plans for Christian and Skinner.
>
> He talked about going to an eight-hour-a-day, forty-hour week. I asked him why we were going to be cut down hours and stuff, and he said that all the union is going to do is ruin us. The union wants a 40-hour week and that we were all going to end up losing money because we'd be cut 80 hours by having to go to a 40-hour week, because the normal month is 240 hours when you're working 24-hour days.
>
> Q. Did Mr. Crisman tell you anything about—that the guys that voted for the union were going to have it tough?
>
> A. He said that the guys who voted union were going to have it rough. They were going to make us wish that we had never thought of the word union. And that the guys that stuck with him and the old man were going to have it made. All they had to do was sit back and relax and run the calls, where we'd be doing all the waxing and washing and scrubbing and all the dirty work.

12. The events on February 17, 1981

On February 17, 1981, prior to the end of his shift at the 13th and Union station, Christian received a telephone call from the dispatcher, Greg Vouse, who asked whether Christian was going to bring in his trip tickets. Christian replied that he could not do so that day because he had other plans. After his shift had ended at 9 a.m. and while he was talking with the employee who had relieved him, Christian received a telephone call from his wife who informed him that she had just received a letter from someone in the Respondent's uniform. Introduced into evidence as General Counsel's Exhibit 5 was a copy of the Respondent's letter, which was dated earlier as February 4, 1981, but actually was delivered on February 17, 1981. In pertinent part, it states:

> February 4, 1981
>
> R. Christian
>
> SUBJECT: Change of Personnel status from Active to Surplus
>
> Your position as Ambulance Paramedic with this Company has been classified as a surplus. Therefore, be advised that effective immediately you are temporarily terminated, and you will be notified when your job is again feasible.
>
> This termination is based on a lack of economical feasibility at this time.

Christian had been hired by the Respondent on September 1, 1980. As noted above, he was terminated on February 17, 1981, by the Respondent. Subsequently, the Respondent reemployed Christian on March 17, 1981, and Christian worked for the Respondent until he quit on May 14, 1981.

13. The events pertaining to the strike

On February 19, 1981, Skinner telephoned Crisman, but he was not available at the time. However, Crisman returned Skinner's call. Skinner was of the view that Crisman was close to the owners of the Company, and he felt that Crisman could help avoid a strike of the Respondent's employees. According to Skinner, Crisman told him the following in their conversation:

> Don Crisman's impression was that the company management knew that there were employee-management problems that had to be dealt with, but that he did not feel that Don Giles would allow a union shop; that he would pull all of his cars in except for one or two which he could run with family members and loyal employees.

On February 20, 1981, certain employees of the Respondent went out on strike. The strike lasted only to February 22, 1981, when the parties entered into a strike settlement agreement. Introduced into evidence as Respondent's Exhibit 1 was a copy of that agreement. It states:

> Agreement
>
> It is hereby agreed to between Automotive and Special Services Local 461 I.B.T. hereinafter referred to as Union and A. A. Superior Ambulance Company hereinafter referred to as the employer that the following conditions shall become effective at the time and date of signature of both parties.
>
> 1. Persons laid off shall be restored to their last held position, station, work opportunity and hours.
>
> 2. Persons who were employed before the beginning of the labor dispute shall be restored to their normal 24 hour shifts.
>
> 3. The Union and Company agree that there will be no curtailment of job related duties while on company time and further that the employees will not engage in any actions on off duty time that will interfere with the operation of the company.
>
> 4. All past practices of the company including extra shift assignments shall be in full force.
>
> 5. The union and the company agree employees shall return to work as soon as proper notification can be given.

6. Bob Christian shall receive back pay for shifts missed due to his termination and is returned to work at first available position.

7. Ed Cleeves shall be on vacation starting date of signing and shall notify the company 5 days prior to ending of his two weeks vacation of his intent to extend that vacation without pay.

8. This agreement may be terminated by either party provided 24 hours notice is given by either party.

Company	Union
/S/ Donald Crisman	John Newell, Jr.
Date 2/22/81	2/22/81

As a result of the strike settlement agreement, Christian received 3 days' backpay, and he was reemployed about a month later on March 17, 1981.

As a result of the strike settlement agreement, Cleeves was placed on a vacation without pay for 2 weeks at his request. Subsequently, Cleeves made a written request that his vacation without pay be extended to March 31, 1981. That request was made by Cleeves in accordance with the discussion between the parties which resulted in the strike settlement agreement. However, Cleeves received no response from the Respondent until a letter dated April 4, 1981. A copy of that letter was received into evidence at the hearing as General Counsel's Exhibit 3. In pertinent part, it states:

4 April 1981

Mr. Ed Cleeves

Your extension of leave of absence expired as of 31 March 1981 and as you have elected not to return to work or notify us that you were further extending your leave, I have no recourse than to put another man in your position.

Therefore, effective this date, you are terminated from your position with this Company, for cause.

DONALD T. GILES
Owner

In Cleeves' view, it had been the responsibility of the Respondent to answer his request for an extended vacation without pay, and then to advise him of when and where to report to work in April. Accordingly, Cleeves explained at the hearing that he had not made any inquiry of the Respondent about his future work schedule after he requested the extension of time. Because Cleeves had accepted on February 16, 1981, a temporary position with the Washington State Senate, he acknowledged at the hearing that he would not necessarily have accepted a position with the Respondent at the time, but he would have given consideration to it, if the Respondent had advised him to report for work. Subsequently, Cleeves received a letter dated April 22, 1981, from the attorney for the Respondent. A copy of that letter was introduced into evidence as Respondent's Exhibit 2. In pertinent part, it states:

April 22, 1981

A. A. Superior Ambulance has asked me to notify you of their stand regarding the termination of your services on April 4, 1981. As you know, this strike settlement agreement signed on February 22, 1981 provided that you should be on vacation starting on that date, and that you would notify the company five days prior to ending your two-week vacation of your intent to extend that vacation without pay. When A. A. Superior Ambulance received your letter that you were requesting an extension of your vacation without pay through March 31, 1981, A. A. Superior Ambulance treated that request as your right under the signed agreement. However, they did subsequently schedule you to commence work in the April schedule on the date of April 4, 1981. When the monthly schedule was composed, representatives of A. A. Superior Ambulance attempted to contact you by telephone only to find that your telephone had been disconnected. When you failed to appear for work on April 4, 1981, A. A. Superior Ambulance assumed that you were no longer interested in your employment with them and sent you a notice of termination for cause. We are now advised by the attorney representing Teamsters Local No. 461 that you had not intended to abandon your employment with A. A. Superior Ambulance and that you are interested in continuing employment if that should become possible.

Unfortunately, in order to continue doing business, A. A. Superior Ambulance has had to hire someone else in the capacity of a driver to fill the position formerly occupied by you. Therefore, if you are interested in renewing employment with A. A. Superior Ambulance at a future date when a driver vacancy occurs, please advise me within ten days of the date of this letter, and A. A. Superior Ambulance Company will reinstate you without back salary at such time as a driver vacancy in the company's work force should occur.

Cleeves had lived at his Olympia, Washington, address for a couple of years at the time of the hearing. He has had the same telephone number for the past 6 years. General Counsel's Exhibits 4(a) and (b) are copies of portions of Cleeves' telephone bills from January through May 1981.

14. The events on February 24, 1981

Skinner's first day of work for the Respondent after the strike had ended was February 24, 1981. On that date Skinner and his partner, Mike Standifer, worked at the Respondent's 13th and Union station. Skinner received a telephone call from Don Giles, who told Skinner that the telephone had been busy when the Respondent had attempted to contact him for a dispatch. Skinner replied that the station had been receiving a number of "wrong number calls" because the station's telephone number had been changed to an unlisted telephone number

during the strike. Skinner had reported that fact to Darlene Giles at the Lakewood office.

Skinner received a written reprimand from the Respondent "for being on the telephone" and not being able to be reached for a dispatch by the Respondent. The reprimand also mentioned that Skinner took too much time to get en route to a call. Skinner's partner, with whom he was working at the time, did not receive any reprimand. Prior to the union activities and the strike, Skinner had never received a written reprimand from the Respondent. Prior to that time, there had been only verbal complaints. For example, Skinner acknowledged at the hearing that he had had conversations with Don Giles "about complaints that he had received from a hospital that I was making passes at the nurses." Skinner acknowledged that he had done so.

15. The events on February 26, 1981

On February 26, 1981, Skinner was working at the Respondent's 13th and Union station when he received a telephone call from Don Giles. According to Skinner, Giles told him that his opinion was that a union did not know anything about a business and especially his type of business; "that he would not allow a union shop in his company; but that he would sit down and talk to the employees as a group, association, or a representative thereof." Skinner replied that "that would be up to the other employees, but I didn't feel that if we did something of that nature that we would have any legal backing and that there was nothing to keep him from firing all of us."

16. The events on March 3 and 4, 1981

On March 3, 1981, Skinner received a dispatch for a "transfer" at 7:18 a.m. Skinner called the dispatcher at 7:26 a.m. and asked for additional time so that he could have a cup of coffee. Skinner explained at the hearing "The standard procedure for emergency calls was that we were to be on the air within two minutes. However, it was very common that on non-emergency calls early in the morning, it was not unusual to get approval to take your time and have a cup of coffee before you left." He added, "Depending on the type of call it is. You are generally instructed by the office what it is, and we respond appropriately." For example, what is termed a "four bell" call means there is an emergency and the ambulance crew is supposed to respond "with lights and sirens," whereas what is termed a "three bell" call means to go with the flow of traffic and without using either the ambulance lights or siren. The term "on the air" means that the ambulance is leaving the station to go to the call.

On March 4, 1981, Skinner received another written reprimand from the Respondent. Skinner said he believed it was for being on the telephone again and the Respondent not being able to contact him for a dispatch for a Tacoma Fire Department call.

17. The events on March 13, 1981

While Skinner was at the 13th and Union station on March 12, 1981, he received a telephone call from Crisman, who, according to Skinner, told him that he "was not to post any union notices." Crisman did not give Skinner any instructions as to what to do with the union notice, nor did he tell Skinner to remove the union notice. However, Crisman did tell Skinner not to post any more union notices. Skinner expressed his view to Crisman "that it was within my legal right to post notices." However, Skinner told Crisman that he "would check on it and get back to him."

After the foregoing conversation, Skinner did speak with Union Representative Newell and related to him Skinner's conversation with Crisman. Newell said he would contact the Union's attorney. Skinner testified, "I was told that in the opinion of the Union's attorney, I had the legal right to do so. However, it would be in my best interest not to jeopardize my job by doing so at that time." Skinner then telephoned Crisman and informed him of the foregoing, but Skinner added that Crisman "had put himself and Superior Ambulance in the position of having another unfair labor practice charge filed against them."

The Respondent's 13th and Union station did not have a bulletin board. Instead, various items were posted on the walls and on the refrigerator. Skinner described such items as: "Company standard operating procedures, an income tax service advertisement, Playboy centerfolds, NFL posters, paramedic seminars, hospital services, and a notice for union meeting that I had posted." The subject matter of the notice posted by Skinner was the date, time, and place of a union meeting. The notice was on a piece of paper about 3 by 5 inches. Skinner put the notice up on the wall over the fireplace at the station. The station is not open to the public. The employees work 24-hour shifts, and they do not have established break or meal times.

In addition to posting the union meeting notice at the 13th and Union station, Skinner also posted a similar notice on the bulletin board at the Respondent's substation at the Puget Sound Hospital. Skinner said that area was for the ambulance crew and was not open to the public. The size of the union notice was on a half sheet of a piece of paper 8-1/2 by 11 inches. Skinner said he was off duty at the time that he posted the union notice at that location about the first week in March 1981.

Garratt recalled that there was an "assortment of pictures from different adult magazines that were posted that people got offended to," as well as company policies and notices, posted on the wall at the Respondent's 13th and Union station. He believed that Crisman had come around and taken down what he considered to be "offensive material."

Hansen described the items placed on the wall and the refrigerator at the Respondent's 13th and Union location as follows: "A football picture of the Huskies, pictures, cartoons cut out of magazines and papers, naked photographs out of Penthouse, Playboy, and stuff like that were on the walls. Generally, anything anybody wanted to put up on the wall."

Introduced into evidence as General Counsel's Exhibit 8 was a copy of a portion of the handwritten notes made by Don Giles in a ledger which was kept in his office. The entry for March 12, 1981, shows: "Skinner; Sandy

notified to take notes regarding union meetings down." The entry for March 13, 1981, shows: "Union meeting notes still posted at 13th and P S office. Darrell removed one from 13th." The entry for March 16, 1981, shows: "Skinner informed not to place union meeting notes on wall. He states he is putting another one up. He states not legal. Crisman advised if he puts another one up—he will be discharged! Written reprimand!"

18. The events on March 16, 1981

On March 16, 1981, Skinner and Crisman had still another telephone conversation. Skinner testified:

> Don told me that I was not to post any more union signs; that if I did post any more signs, that he would come out personally and terminate me on the spot; that it was Superior Ambulance's property and they would determine what would be posted.

Also on March 16, 1981, Skinner called in to the Respondent's Lakewood office the mileage on the vehicle which Skinner and his partner were using. A short time later, Skinner received a telephone call regarding it. He did not recall at the hearing who had telephoned him. He testified, "I was told that the driver was supposed to be the person to call in the mileage and that I was not to call the mileage in."

19. The events on March 17, 1981

On March 17, 1981, Skinner and his partner received a dispatch involving Esther Rose. Skinner said, "We received a call later for taking too long to get to the scene." Skinner testified:

> Trudy Giles "called and was making accusations to the effect of I was trying to cause the company to lose business by not getting to calls timely. That I had spilled coffee on a trip ticket or was that my normal way of doing my job in such a sloppy manner.

Skinner further testified, "I attempted to interrupt her conversation. Being unable to do so, I hung the telephone up on her."

About 20 minutes later, which was approximately 8:30 a.m., Trudy Giles telephoned Skinner once again and asked if he could stop by the office when he got off duty to pick up a letter. Skinner testified, "I told her no; I had other plans for the day." Trudy Giles asked Skinner if he could stop by the following day, and Skinner replied that he had 4 days off and that he had plans. Trudy Giles then asked him for his home address, which Skinner gave to her.

Approximately 45 minutes later that morning after Skinner had arrived at his house, Crisman arrived and gave a termination letter to Skinner. Introduced into evidence as General Counsel's Exhibit 6 was a copy of that letter. In pertinent part, it states:

17 March 1981

Mr. Richard Skinner.

Since your return to work on 2-24-81, it has been necessary to verbally reprimand you for numerous infractions to standard operating procedures with this company. This includes, but not limited to, 8 min., to get on the air with a total time of 33 minutes to arrive at the scene.

You are therefore terminated from the employment with this firm for cause. Effective immediately you are discharged from this Company upon receipt of this notice.

DONALD T. GILES
Owner

Crisman gave his opinion at the hearing with regard to why Skinner had not been terminated earlier by the Respondent. He testified, "My interpretation of the reasons why it took so long to get rid of Mr. Skinner was that everything had to be so well-documented or the Labor Board was going to come and stomp on your head."

According to Don Giles, he prepared a letter regarding Skinner's termination "about four or five days" after the termination of Skinner. According to Giles, the letter does not cover all of the reasons for Skinner's termination, but ". . . it covers the majority of them." A copy of that letter was introduced into evidence as Respondent's Exhibit 3. In pertinent part, it states:

MR. RICK SKINNER

You are hereby terminated from employment with this Company for the continued violations of verbal and written standard operating procedures, which you have been aware of from the date of your employment.

FACT: On numerous occasions you have tied up the telephone at 13th and Union sub-station and has delayed the dispatcher in dispatching your unit to a call. This has caused this company embarrassment to the Tacoma Fire Department, due to their request that the unit respond within two (2) minutes. This has been brought to your attention several times without apparent effect.

FACT: We have over the past six (6) months, received several complaints from various hospitals and especially from Tacoma General Hospital concerning your actions when you were hanging around the Emergency Room. This has been brought to your attention, verbally, each time. This apparently has meant little to you for you have continually stayed around a hospital as long as one and a half hours. Of course, under various guises as to your reasons.

FACT: By virtue of your status as a Paramedic, you have been informed that you are the senior member on the ambulance and on your shift, yet you have failed to adequately supervise your driver and maintain the ambulance and quarters in a clean condition, both inside and out, therefore in direct violation to the standard operating procedures which have been in effect for over five years.

FACT: That you entered the Emergency Room at Madigan General Hospital, while on duty making inflammatory remarks about this Company and conversed derogatorily about any Madigan personnel who might want to work part time for this company.

FACT: On 3-4-81, you were dispatched on a call at 0718 hrs and you came on the air at 0726 hrs. At this time you were requesting two to three more minutes for a cup of coffee, which was denied. You arrived at the scene at 0759 hrs, causing the hospital to call back wondering where the ambulance was. This call should not have taken more than twenty minutes, at the most.

FACT: On 3-17-81, you were dispatched to Esther Rose at 0634 hrs you came on the air at 0643 hrs arriving at the nursing home at 0647 hrs.

FACT: On many occasions you have taken trip tickets home with you to complete, you have been informed repeatedly that this cannot be tolerated, yet you have continued to do so. All trip tickets are the property of the Company. On 3-17-81, Mrs. Giles, who is an owner and your immediate superior called you on the phone to ask about trip tickets that were missing, you deliberately hung up on her, thus creating an act of insubordination to an employer, and failing to respond to her questions.

FACT: You were instructed that due to the fact that there were no bulletin board[s] up at the substations, and since it was the policy of the company that only company material would be placed in a given area yet you posted material, not of company policy on the wall without permission. When you were instructed to take your notices down, you became indignant when you were informed that we did not want notices which could cause additional damage to the walls of the station.

DONALD T. GILES
Owner

Introduced into evidence as General Counsel's Exhibit 7 was a copy of the "Determination Notice" of the Employment Security Department of the State of Washington, which awarded unemployment compensation benefits to Skinner.

Conclusions

In its decision in *Florida Steel Corporation*, 224 NLRB 45 (1976), the Board held:

> It has long been recognized that the test of interference, restraint, and coercion under Section 8(a)(1) of the Act does not turn on a respondent's motive, courtesy, or gentleness, or on whether the coercion succeeded or failed. It also does not turn on whether the supervisor and employee involved are on friendly or unfriendly terms. Rather, the test is whether the supervisor's conduct reasonably tended to interfere with the free exercise of the employee's rights under the Act. *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975).

In its decision in *Saint Luke's Hospital*, 258 NLRB 321 (1981), the Board held:

> It is well settled that interference, restraint, and coercion under Section 8(a)(1) do not turn on employer motivation, but on whether the employer's conduct may reasonably be said to interfere with the free exercise of rights guaranteed to employees under the Act. *Continental Chemical Company*, 232 NLRB 705 (1977); *American Freightways Co., Inc.*, 124 NLRB 146 (1959).

During the course of the hearing, some of the witnesses related their subjective feelings with regard to the absence of being afraid, being intimidated, or being coerced in the earlier conversations about which they testified. In light of the Board holdings set forth above, I conclude that an objective test described by the Board, rather than the subjective feelings of the employees involved, should be used as guidelines in determining whether the statements made by the supervisors, or the questioning by the supervisors, violated Section 8(a)(1) of the Act.

In *Paceco, a Division of Fruehauf Corporation*, 237 NLRB 399, 400 (1978), the Board stated:

> . . . an interrogation of an employee's union sympathies or his reasons for supporting a union need not be uttered in the context of threats or promises in order to be coercive. The probing of such views, even addressed to employees who have openly declared their prounion sympathies, reasonably tends to interfere with the free exercise of employee rights under the Act, and, consequently, is coercive.

With the foregoing guidance from the Board in mind, and without repeating the findings of fact which have been set forth earlier in this Decision, I conclude that the evidence shows the following instances of unlawful interrogation by the Respondent's agents: the conversation between Hansen and Trudy Giles in section 7 herein; the conversation between Cleeves and Crisman in section 8 herein; the two conversations between Pennington and Crisman in section 8 herein; the conversation between Walradt and Don Giles in section 8 herein; the conversation between Christian and Crisman in section 8 herein; the two conversations between Christian and Trudy Giles in section 8 herein; the conversation between Hansen and Crisman in section 9 herein; and the conversation between Hansen and Crisman in section 11 herein.

The evidence shows that various threats were made in conversations between employees and supervisors with regard to a reduction in the size of the Respondent's business operations; loss of employment; reprisals, and physical harm because the Respondent's employees engaged in union activities. I conclude that the evidence establishes the following incidents of threats being made in violation of Section 8(a)(1) of the Act: the conversation between Cleeves and Crisman in section 5 herein; the conversation between Walradt and Don Giles in section 8 herein; the conversation between Christian and Don Giles in section 8 herein; the conversation between

Christian and Darrell Giles in section 8 herein, which by an objective standard is not humorous; the conversation between Hansen and Crisman in section 9 herein; the conversation between Hansen and Crisman in section 11 herein; the conversations between Skinner and Crisman in sections 13 and 18 herein.

While the conversation between Newell and Don Giles in section 6 herein is not violative of Section 8(a)(1) of the Act because Newell was not an employee of the Respondent, the conversation further reveals what the Respondent's attitude was at that time with regard to the rights of employees to select a union to represent them. It will be recalled that Newell stated with regard to Don Giles, "He said he would fire anybody he pleased. If he got down to just running the ambulance by himself, he would do it." Although Crisman described such statements by Don Giles with regard to reducing his business operations to two cars to be "one of his favorite comments," the evidence presented in this case shows that the threat was linked directly to the union activities of the Respondent's employees, rather than actions by the Respondent's competitors.

In *South Shore Hospital*, 229 NLRB 363 (1977), the Board held:

> In determining whether a respondent created an impression of surveillance, the test applied by the Board is whether employees would reasonably assume from the statement in question that their union activities had been placed under surveillance. *Schrementi Bros., Inc.*, 179 NLRB 853 (1969).

With that guidance from the Board in mind, I conclude that the evidence shows that the Respondent created the impression of surveillance of its employees' union activities in the conversation between Hansen and Crisman in section 9 herein.

In the conversation between Hansen and Crisman set forth in section 11 herein, I conclude that the evidence shows an unlawful promise of a supervisory position; choice of assignments, partners, and location of work; and a raise if the employee would not engage in union activities. In the conversation between Hansen and Don Giles set forth in section 9 herein, I conclude that the evidence shows that an adverse change in the employees' working conditions was made because of their union activities.

As revealed in the conversations between Skinner and Crisman as set forth in sections 17 and 18 herein, the Respondent has promulgated a no-solicitation rule specifically applicable only to union notices, and without any limitation as to time or place on the Respondent's premises. In *Hoerner Waldorf Corporation*, 227 NLRB 612 (1976), the Board held: "Because of its discriminatory enforcement, Respondent's no-solicitation rule is without justification and accordingly must fall." See also the Board's decision in *Hammary Manufacturing Corporation, a Division of U.S. Industries, Inc.*, 258 NLRB 1319 (1981). I am not unmindful of the fact that the General Counsel's amended consolidated complaint did not specifically allege an unlawful no-solicitation rule, although there is an allegation in paragraph 5(f) of the General Counsel's complaint pertaining to a threat of discharge by Crisman on March 16, 1981, if an employee continued to post notices announcing union meetings. Nevertheless, the subject matter seems to be sufficiently related to the existing allegations of the General Counsel's complaint so as to warrant a finding. See *Alexander Dawson, Inc. d/b/a Alexander's Restaurant and Lounge*, 228 NLRB 165 (1977), enfd. 586 F.2d 1300 (9th Cir. 1978).

With regard to the 8(a)(1) and (3) allegations pertaining to the Respondent's termination of Christian, Cleeves, and Skinner, the evidence reveals that those three persons were the ones who initiated the union organizational activities among the employees of the Respondent. (See sec. 5 herein.) In addition, the evidence shows that the Respondent had knowledge of their union activities. For example, note the statement made by Crisman to Hansen as set forth in section 11 herein ". . . Mr. Giles, knew who the cause of all this was and that it was Cleeves, Christian and Skinner. And he's already taken care of Cleeves and he has plans for Christian and Skinner." See also the conversation between Crisman and Jones set forth in section 5 herein regarding Crisman's inquiry about Cleeves starting a union. Note the conversation between Christian and Trudy Giles set forth in section 8 herein, "She asked me if I was involved, and I said yes." Later on in that conversation, Trudy Giles made the comment to Crisman, which was overheard by Christian, "I know somebody that's going to get canned."

As indicated above with regard to the findings of numerous independent violations of Section 8(a)(1) of the Act, the counsel for the General Counsel has presented substantial evidence of animus towards the employees' union organizational activities.

At the hearing, Don Giles attributed the initial layoff of Christian and Cleeves to the closing of the 74th and Oakes station. The Board held in *International Business Systems, Inc.*, 258 NLRB 181, fn. 3 (1981), "Unlawful motivation may be, and indeed as a practical matter must be, inferred from all the circumstances." Examining the circumstances surrounding the 74th and Oake station, it will first be noted that the Respondent had received in December 1980 a notice with regard to zoning at that location. Nevertheless, it was not until after the union organizational activity had begun in January 1981, that the Respondent put up a notice in February 1981 regarding the proposed closing of that facility. The sequence of events also must not be ignored as described in section 8 herein, where the initial closing of the 74th and Oakes station occurred immediately after the interrogation of employees there by Crisman and then by Trudy Giles. The station was ordered to be closed at the end of the telephone conversation with Trudy Giles. Thereafter followed further interrogation and threats at the Lakewood office, and then the 74th and Oakes station was reopened. Then the station was ordered closed once again at 9 a.m. the next day. However, the Respondent continued to pay rent and utilities and continued to have telephone service at the closed station. Then, "in the early spring" the 74th and Oakes station reopened and continued to be in operation until October 1, 1981, when the

Respondent obtained another station location about a mile away from 74th and Oakes. The circumstances presented here do not overcome the *prima facie* case of discrimination presented by the General Counsel, and I conclude that the temporary closing of the 74th and Oakes station was used as a pretext for the termination of Christian and Cleeves. Unlike Christian who returned to work for the Respondent and subsequently quit working there, Cleeves never returned to work for the Respondent. (See secs. 12 and 13 herein.) According to Cleeves, his request for an extension of time of his vacation without pay was never responded to by the Respondent, and instead, the Respondent terminated him by letter dated April 4, 1981. Considering the circumstances of the strike settlement agreement and Cleeves request which went unanswered, I conclude that Cleeves acted in accord with the agreement and has not forfeited his right to an offer of reinstatement.

What the Respondent considered to be Skinner's shortcomings and deficiences in attitude and job performance had existed for a long period of time before the Respondent terminated him. Skinner was employed by the Respondent from May 1979 to March 17, 1981. The Respondent tolerated Skinner's job performance for a substantial period of time, until Skinner took part in union organizational activities among the employees of the Respondent. Earlier recommendations to terminate Skinner had not been followed by the Respondent, and no written warnings had been given to Skinner until after his union activities had begun. Dr. Krueger had recommended in November 1980 that Skinner be terminated. His recommendation was not followed, so Dr. Krueger left his position as medical advisor to the Respondent. As Dr. Krueger stated at the hearing, "the ambulance owner . . . has to choose between an employee and you as a medical advisor." (See sec. 3 herein.) In addition, Crisman had "recommended to no avail" that Skinner be terminated. In Crisman's opinion, Skinner's problems had existed since shortly after Skinner went to work for the Respondent. Crisman's opinion of Skinner at the hearing was that Skinner was the worst employee in the entire company. Nevertheless, the Respondent did not terminate Skinner until after Skinner had taken part in union activities.

Furthermore, the evidence reveals that Skinner's posting of the union notices was a matter of particular concern to the Respondent. In this connection, see section 17 regarding the conversation between Skinner and Crisman, and the ledger maintained by Don Giles, "Crisman advised if he puts another one up—he will be discharged!" See also the last paragraph of the letter prepared by the Respondent after the termination of Skinner, which was introduced into evidence as Respondent's Exhibit 3 and is set forth in section 19 herein.

Counsel for the General Counsel points out that the Respondent treated Skinner and his partner in a disparate manner in that the Respondent issued reprimands to Skinner, but not to Skinner's partner. (See sec. 14 herein.) In addition, while Skinner hung up the telephone on Trudy Giles, the evidence shows that Pennington similarly hung up the telephone on Crisman, but there is no evidence of any reprimand or action taken against Pennington.

The incidents involving Skinner and females in the ambulance crew's quarters were not revealed to the Respondent until after the termination of Skinner. (See sec. 4 herein.) Thus, those particular incidents did not play a part in the Respondent's decision to discharge Skinner. In *Tera Advanced Services Corporation*, 259 NLRB 949, fn. 2 (1982), the Board held: "In discerning an employer's motive for a disciplinary action, we analyze only those factors which the employer considered at the time the action was taken."

With regard to the introduction of the state unemployment decision, the Board held in *Leshner Corporation*, 260 NLRB 157, 158 (1982):

> The Administrative Law Judge improperly excluded as evidence the decision of the Ohio Bureau of Employment Services Board of Review, concerning Boyd's claim for unemployment compensation. See *Magic Pan, Inc.*, 242 NLRB 840, 841 (1979), where the Board referred to such proceedings having probative value though not conclusive.

After considering all of the foregoing, I conclude that the evidence shows that the Respondent has violated Section 8(a)(1) and (3) of the Act by the termination of Christian, Cleeves, and Skinner under the Board's decision in *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

With regard to the General Counsel's allegations in his complaint pertaining to Don Sutherland, I conclude that there is no evidence to support those allegations, and I hereby recommend to the Board that they be dismissed. (See par. 6 of the General Counsel's amended consolidated complaint.)

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by the following acts and conduct:

(a) Interrogating employees about their union membership and union activities.

(b) Threatening employees with a reduction in the size of the Company's business operations; loss of employment; reprisals; and physical harm because employees engaged in union activities.

(c) Creating among its employees the impression that the Respondent has engaged in the surveillance of their union activities by stating that it had a list of those employees who had signed with the Union.

(d) Promisimg employees supervisory positions, choice of assignments, partners, and location of work, and a raise, if employees do not engage in union activities.

(e) Making adverse changes in the working conditions of employees because employees engaged in union activities.

(f) Announcing a no-solicitation rule which prohibits specifically the posting of union notices by employees at any time and in any place on the Respondent's premises.

4. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act by the following acts and conduct:

Terminating from employment Robert A. Christian, Edward D. Cleeves, and Richard Skinner because they had engaged in union activities.

5. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Since I have found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend to the Board that the Respondent be ordered to cease and desist from engaging in such unfair labor practices.

I shall also recommend to the Board that the Respondent be ordered to take certain affirmative action in order to effectuate the policies of the Act. Such affirmative action will include making whole Christian, Cleeves, and Skinner in accordance with the Board's decision in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest on backpay to be computed in accordance with the Board's decisions in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962); *Florida Steel Corporation*, 231 NLRB 651 (1977); and *Olympic Medical Corporation*, 250 NLRB 146 (1980). While there is some testimony in the record which bears upon post-discharge matters, the amount of backpay, if any is due to the discriminatees under Board formulas, may be more appropriately and more fully explored in the compliance stage of the proceeding.

Because Christian was reemployed by the Respondent and thereafter voluntarily quit his employment, I shall not recommend that the Respondent be required to make an offer of reinstatement to him. However, I shall recommend that offers of reinstatement be made by the Respondent to Cleeves and Skinner as one of the remedies for their unlawful terminations.

ORDER[1]

The Respondent, A. A. Superior Ambulance Service, Tacoma, Washington, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating employees about their union membership and union activities.

(b) Threatening employees with a reduction in the size of the Company's business operations; loss of employment; reprisals; and physical harm because employees engaged in union activities.

(c) Creating among its employees the impression that the Respondent has engaged in the surveillance of their union activities by stating that the Respondent had a list of those employees who had signed with the Union.

(d) Promising employees supervisory positions, choice of assignments, partners, location of work, and a raise, if employees did not engage in union activities.

(e) Making adverse changes in the working conditions of employees because employees engaged in union activities.

(f) Announcing a no-solicitation rule which prohibits specifically the posting of union notices by employees at any time and in any place on the Respondent's premises.

(g) Terminating employees because they have engaged in union activities.

(h) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Make whole Robert A. Christian, Edward D. Cleeves, and Richard Skinner for their loss of pay, together with appropriate interest, which has resulted from the Respondent's termination of them in accordance with "The Remedy" section of this Decision.

(b) Offer immediate and full reinstatement to Edward D. Cleeves and Richard Skinner to their former position of employment with the Respondent, without the loss of any of their seniority or other benefits, but if their former positions of employment no longer exist, then offer them substantially equivalent positions of employment with the Respondent, without the loss of their seniority or other benefits.

(c) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all of the records which are needed to analyze and determine the amounts of money due under the terms of this Order.

(d) Post at its Lakewood, Washington, office and at all of the stations where the Respondent's employees work, copies of the notice to employees, which is marked as an "Appendix"[2] to this Decision. The Regional Director for Region 19 of the Board will provide sufficient copies of the notice to the Respondent. After the notices have been signed by an authorized representative of the Respondent, the notices shall be posted for 60 consecutive days thereafter, in conspicuous places, including all of the places where other notices to employees are customarily posted. The Respondent shall take reasonable steps to ensure that the Board's notice is not altered, defaced, or covered by any other material during the posting period.

(e) Within 20 days from the date of this Order, notify the Regional Director for Region 19 of the Board, in writing, what steps the Respondent has taken to comply with the terms of this Order.

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[1] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."